1.

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2190 /2005

PETITIONER : U. K. Pambhoi,
S/o Shri R. R. Pambhoi,
Aged about 45 years,
Chief Executive Officer,
Janpad Panchayat Darbha,
Tahsil- Jagdalpur,
District – Baster (C.G.).

- Versus-

RESPONDENTS :
1. State of Chhattisgarh,
Through Secretary, Scheduled Caste & Scheduled Tribe, and Tribal Welfare Department, Mantralaya, D. K. S. Bhawan, Shastri Chowk, Raipur (C.G.).
2. Collector,
Baster (C.G.).
3. Zila Panchayat Baster,
Through it's Chief Executive Officer,
Baster (C.G.).
4. Assistant Investigation Officer,
Office of the Assistant Commissioner,
Tribal Welfare, Jagdalpur,
Baster (C.G.).

P.R. No. 3771/05
Presented by Shri S. Bhattacharya
dated 31-05-05

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS, PROHIBITION, CERTIORARI ETC.OR ANY OTHER DIRECTION OR ORDER TO DO JUSTICE IN THE MATTER.

Details of the petition.

Received copy
30/5/05
INCHARGE
Constitution Cases Section
Office of the Advocate General
State of Chhattisgarh

AFR

HIGH COURT OF JUDICATURE AT BILASPUR :: CHHATTISGARH

W.P. No.2190 of 2005

U.K. Pambhoi

Versus

State of Chhattisgarh & Others

ORDER

Post for 5 /07/2005

Sd/-
Satish K. Agnihotri
Judge

Seen
5.7-05

Seen
5/7/05

Office

HIGH COURT OF JUDICATURE AT BILASPUR :: CHHATTISGARH

W.P. No.2190 of 2005

U.K. Pambhoi

Versus

State of Chhattisgarh & Others

Present	:	Mr. Sanjay K. Agrawal, Advocate with Mr. Saurabh Sharma, learned counsel for the petitioner. Mr. Pankaj Shrivastava, learned Panel Lawyer for the State of Chhattisgarh.

ORDER
(Passed on 5th July, 2005)

The present petition filed under Article 226 of the Constitution of India impugnes the order dated 27.05.2005 passed by the Government of Chhattisgarh, Scheduled Castes & Schedules Tribes and Tribal Welfare Department suspending the petitioner.

2. The facts relevant for disposal of this petition are that the petitioner was appointed as Chief Executive Officer-Circle Organizer in the year 1982. The petitioner was posted as Chief Executive Officer, Janpad Panchayat, Jagdalpur during the period 2001-02. The petitioner was assigned the powers of Pariyojna Adhikari, Zila Panchayat Mini Jal Grahan Kshetra also. In November, 2004, the petitioner was transferred from the post of Chief Executive Officer, Janpad Panchayat, Jagdalpur to the post of Chief Executive Officer, Janpad Panchayat, Darbha. A show cause notice was issued by the Chief Executive Officer, Zila Panchayat, Bastar against the petitioner on 28.02.2004 (Annexure P-2) to submit his explanation to the allegations that on enquiry it was found that when the petitioner was looking after the work of Mini Jal Grahan Kshetra as

Pariyojna Adhikari, Jagdalpur, irregularities have been committed in purchases and planting of trees. It was further found in the enquiry that several plants have not been planted as such the Government had suffered a loss of Rs.3.00 lakhs. The petitioner has committed gross irregularities and misconduct in performance of this duty. A reply was submitted by the petitioner to the said show cause notice on 26.04.2004 stating that the petitioner was not responsible for the work as the same was executed by the Micro Watershed Committee.

3. On 05.08.2004, the Secretary to the State Government, Scheduled Castes & Scheduled Tribes and Tribal Welfare Department issued one more show cause notice (Annexure P-5) that during the period from August, 2002 to 2003, the seedlings of Cashew nuts were not planted properly and had been found dead causing a loss of Rs.10.00 lakhs to the State Exchequer, other seedlings were also not planted as such causing a loss of Rs.30.00 lakhs, as to why the petitioner be not put under suspension during the period of departmental enquiry. Reply to the said show cause notice was also submitted by the petitioner in August, 2004 itself (Annexure P-4) stating that he was not responsible for the plantation and the entire work was executed by the Committee under the supervision of the Collector.

4. It appears that after considering the reply submitted by the petitioner to the Chief Executive Officer, Zila Panchayat, Bastar and to the Secretary, Scheduled Castes & Scheduled Tribes and Tribal Welfare Department, the petitioner was suspended on the ground that the petitioner has committed financial irregularities in plantation of cashew nut plants and has failed to perform his duties properly, vide order dated 27.05.2005 (Annexure P-6) in accordance with Rule 9 of the Chhattisgarh

Civil Services (Classification, Control & Appeal), Rules, 1966 (herein after referred to as "the Rules, 1966").

5. Mr. Sanjay K. Agrawal, learned Advocate with Mr. Saurabh Sharma, learned Advocate appearing for the petitioner contended that the Rules, 1966 framed under the proviso to Article 309 of the Constitution of India are statutory and the said Rules, 1966 be treated as part of the Act. In support of his contention, he cited the decision of the Supreme Court in **State of U.P. vs. Babu Ram** reported in **AIR 1961 SC 751.**

6. Learned counsel for the respondents does not dispute this proposition that the rules made under statute must be treated for all purposes of construction / obligation exactly as if they were in the Act and are to be of the same effect as contained in the Act.

7. This is a well settled position of law.

8. Learned counsel for the petitioner further submits that there is a violation of provisions of Rule 9 of the Rules, 1966. Contention of the learned counsel for the petitioner is that the respondent No.1 while placing the petitioner under suspension, has not recorded reasons as to why the suspension of the petitioner is necessary to conduct enquiry, when the petitioner is posted at some other place far away from the place where alleged irregularities have been committed and as such the impugned order is illegal and invalid. It was further contended by the leaned counsel for the petitioner that no reasons have been recorded in the impugned order and as such the order of suspension is illegal. The learned counsel relies on the decisions of the Supreme Court in the cases of **Union of India vs. M.L. Capoor & Others** reported in **AIR 1974 SC 87; Union of India & Others vs. E.G. Nambudiri** reported in **(1991) 3 SCC 38; The**

State of Mysore vs. M.H. Bellary reported in AIR 1965 SC 868; Vidya Dhar Pande vs. Vidyut Grih Siksha Samiti & Others reported in AIR 1989 SC 341; Nikka Ram Sharma vs. Central Social Welfare Board & Others reported in 1990(4) SLR 407; Khemchand vs. Union of India reported in AIR 1963 SC 687; P.L. Shah vs. Union of India reported in AIR 1989 SC 985.

9. Learned counsel for the petitioner next submits that in the present case there was not even a contemplation about initiating a departmental enquiry before placing the petitioner under suspension on that ground also the suspension order is invalid and deserves to be quashed. Learned counsel relies on the decision of the Supreme Court in the case of Managing Director, U.P. Wareshousing Corporation vs. Vijay Narayan Bajpai reported in AIR 1980 SC 840. The last contention of the learned counsel for the petitioner was that the reasons must be recorded before placing an employee under suspension and in absence of that the order becomes illegal. A reliance was placed by the learned counsel for the petitioner in the case of D. Srinivas Iyer vs. State of Mysore reported in 1971 SLR 202.

10. On the question of availability of alternative remedy, the contention of the learned counsel for the petitioner is that since the suspension order was passed in the name of the Governor, there is no question of availability of appeal against the order of suspension and as such no alternative remedy is available. Learned counsel for the petitioner refers to a decision of the Supreme Court in the case of L. Hirday Narain vs. Income-Tax Officer, Bareilly reported in 1970(2) SCC 355.

11. On the contrary, Mr. Pankaj Shrivastava, learned counsel for the respondents submitted that before suspension the petitioner was given two show cause notices, one by the Zila Panchayat, Bastar and the second by the Secretary to the Government, Scheduled Castes & Scheduled Tribes and Tribal Welfare Department, Raipur, wherein it was clearly indicated as to why the petitioner be not put under suspension pending departmental enquiry. Therefore, submission of the learned counsel for the petitioner that there was no contemplation of departmental enquiry as prescribed under Rule 9(1) is misleading. The petitioner was rightly suspended because there is a clear contemplation of departmental enquiry. It was further contended by learned counsel for the respondents that reasons are clearly recorded in the order of suspension that serious financial irregularities causing loss to the Government Exchequer has been committed by the petitioner by not purchasing and planting cashew nut seedlings properly. Learned counsel appearing for the respondents further submits that the reasons in detail need not be necessarily recorded while passing the order of suspension because this does not amount to punishment with civil consequences. The Rules, 1966 provides for 90 days time for the State Government to supply copy of charges and other documents from the date of order of suspension under proviso to Sub-rule (2-a) of Rule 9 of the Rules, 1966. The present petition filed by the petitioner is premature and deserves to be dismissed. Learned counsel for the respondents placed a reliance on the decisions of the Supreme Court in State of Orissa through its Principal Secretary, Home Department vs. Bimal Kumar Mohanty reported in 1994(4) SCC 126; and in State Bank of India & Others vs. Harbanslal reported in 2000(6) SCC 504.

12. After having heard learned counsel for the parties and perusing the records it is found that there is no violation of provisions of Rule 9 of the Rules, 1966 before passing the order of suspension on 27.05.2005. Rule 9 of the Rules, 1966 reads as under:

"SUSPENSION

9. (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order, may place a Government servant under suspension-

(a) where a disciplinary proceeding against him is contemplated or is pending, or

(b) where a case against him in respect of any criminal offence is under inventilation, inquiry of trial:

[Provided that a Government Servant shall invariably be placed under suspension when a challan for a criminal offence involving corruption or other moral turpitude is filed against him:]

Provided further that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority-

(a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation:- The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

[(2-a) Where a Government servant is placed under suspension under clause (a) of sub-rule (1), the order of suspension shall contain the reasons for making such order and where it is proposed to hold an enquiry against such

Government servant under rule 14, a copy of the articles of charges, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained shall be issued or caused to be issued by the disciplinary authority to such Government servant as required by sub-rule (4) of Rule 14, within a period of 45 days from the date of order of suspension:

Provided that where the disciplinary authority is the State Government, the copy of charges and other documents mentioned above shall be issued or caused to be issued to such Government servant within a period of 90 days from the date of order of suspension.]

(2-b) Where the disciplinary authority fails to issue to the Government servant, a copy of the charges and other documents referred to in sub-rule(2-a) within a period of 45 days, the disciplinary authority shall, before expiry of the said period, obtain orders in writing of the State Government for extension of the said period of suspension:

Provided that the period of suspension shall in no case be enhanced beyond a period of 90 days from the date of the order of suspension.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension, is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant, is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5)(a) An order of suspension made or deemed to have been made under this rule, shall continue to remain in force until it is modified or revoked by the authority competent to do so:

[Provided that the order of suspension shall stand revoked on expiry of the period of forty-five days from the date of order of suspension in case a copy of charges and other documents referred to in sub-rule (2-a) are not issued to such Government servant by the disciplinary authority (if it is not the State Government) without obtaining the orders of the State Government for extension of the period for issue of the said documents, as required under sub-rule (2-b):

Provided further that the order of suspension shall stand revoked on expiry of the period of 90 days from the date of order of suspension, in case the copy of charges and other documents referred to in sub-rule (2-a) are not issued to such Government servant.]

[(b) In respect of a Government servant, whose orders of suspension stand revoked in accordance with the first or second proviso of clause (a) the authority competent may, if it considers expedient so to do, place him under suspension after a copy of charges and other documents, as required by sub-rule(4) of rule 14, have been issued to him.]

[(c)] Where a Government servant is suspended or is deemed to have been suspended, (whether in connection with any disciplinary proceeding or otherwise and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

[(d)] An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

[provided that an order of suspension made under the first proviso to sub-rule (1) of rule 9 shall not be revoked except by an order of the Government made for reasons to be recorded.]"

The respondents have issued show cause notices dated 28.02.2004 and 05.08.2004 seeking explanation of the petitioner. The suspension order dated 27.05.2005 was passed after considering the explanation of the petitioner. It was clearly indicated in the show cause notice that it was proposed to hold departmental enquiry for the alleged financial

irregularities and dereliction of duty committed by the petitioner, therefore, contention of the learned counsel for the petitioner cannot be accepted that there was no contemplation of departmental enquiry and as such the suspension order was illegal. With regard to the contention of the learned counsel for the petitioner that the reasons were not recorded in the order, it is clearly found in the order of suspension dated 27.05.2005 (Annexure P-6) that the reasons to the extent that the petitioner had failed to perform his duties in purchasing and planting of cashew nut plants in Jamabada Micro Watershed and committed financial irregularities by causing financial loss to the State Exchequer. On perusing the notice dated 28.02.2004, reply dated 26.04.2005, show cause notice dated 05.08.2004 and reply to that in the month of August, 2004, it is clearly established that the departmental enquiry was under contemplation as prescribed under Rule 9(1)(a), therefore, the impugned order is legal and valid.

13. On the next submission i.e. detailed reasons have not been recorded, therefore, the suspension order was illegal. It does not stand on the ground in view of the above stated facts. Reliance of the learned counsel for the petitioner on the above cited decisions of the Supreme Court is not in the case of suspension but it was the case of expunction of adverse CRs. In the case of **Union of India & Others vs. E.G. Nambudiri** (supra) the Supreme Court has observed as under:

> "6. - - - - - - - - - -. If the statutory rules require communication of reasons, the same must be communicated but in the absence of any such provision absence of communication of reasons do not affect the validity of the order."

In the present case there was no requirement under Rules, 1966 to communicate the reasons which are apparent in the notice and reply to the petitioner. In the case of **State of Mysore Vs. M.H. Bellary** (supra)

and in **Vidya Dhar Pande vs. Vidyut Grih Siksha Samiti & Others** (supra) question of termination was under consideration involving punishment with civil consequences. The Supreme Court in **P.L. Shah vs. Union of India** (supra) has considered nature of suspension and held as under:

> "6. An order of suspension is not an order imposing punishment on a person found to be guilty. It is an order made against him before he is found guilty to ensure smooth disposal of the proceedings initiated against him. Such proceedings should be completed expeditiously in the public interest and also in the interest of the Government servant concerned. xxx xxx xxx"

14. Argument of the learned counsel for the petitioner is that the petitioner is not posted at the place where the alleged irregularities and misconduct was committed and as such suspension is not necessary for smooth conduct of departmental enquiry is not acceptable. The petitioner holding the same office in other place may influence and tamper with the records at Janpad Panchayat, Jagdalpur. There may be an apprehension that the petitioner holding office of the Chief Executive Officer may tamper with the record or likely to tamper with the record or may influence the enquiry.

15. It is not necessary to go into the question of availability of alternative remedy as the matter has been considered on merits.

16. It is well settled principle of law that the suspension is temporary and it does not involve punishment with civil consequences. Suspension means a temporary deprivation of the functions not amounting to any reduction of his rank or his status. The employee under suspension continues to be a Government Servant, he is not permitted to work keeping in view pendency of departmental enquiry to avoid undue

influence in the proceedings of departmental enquiry and likely tampering with on records. At this stage it is not necessary to go into the charges levelled against the petitioner because it may prejudice the case of the parties wherein the respondents are likely to initiate the departmental enquiry. Impugned order was passed on 27.05.2005 by the State Government, the State Government has to submit charge sheet and relevant documents under proviso to Sub-Rule (2-a) of Rule 9 of the Rules, 1966 within 90 days.

17. In view of the foregoing, the suspension order is valid and writ petition is dismissed accordingly.

No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Sarma